



THE PATIENT'S RIGHT TO PRIVACY

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The right of privacy or the right to privacy is the right of an individual to be let alone, or the right to live one's life in seclusion from unwarranted and undesired publicity. This doctrine, which has just within the Twentieth Century been recognized in law, has been summarized in *Melvin v. Reid*, 112 Cal. App. 285, 297 P. 91 is follows: An incident of the person and not of property; a purely personal action which does not survive the person injured; the right does not exist where the person has himself published or consented to the publication; the right does not exist where the person has become so prominent that by his very prominence he has dedicated his life to the public; the right can only be violated by printings, writings, pictures, or other permanent publications and not by word of mouth; and—in some jurisdictions only—that the right of action accrues only when publication or reproduction is made for gain or profit.

There are several ways in which a patient's privacy can be invaded. One is by physical intrusion upon a person at a time when he might rightfully expect to be left alone. This category embraces the type of situation in which a physician brings a lay friend into the operating, examining, or delivery room.

The manner in which we are concerned in this article includes those cases in which physicians have caused to be published articles or case reports about patients without the patient's knowledge or consent, and, failing to adequately conceal the identity of the patient.

Plaintiff alleged that the defendants publish a journal which is widely circulated; that, he was treated by two physicians, also named as defendants; that these physicians took certain photographs of plaintiff, at the commencement of the treatment, and again at the completion, "before and after" pictures, and that these photographs, four in number were published in the aforementioned journal "as part of an article written and prepared by and bearing the by-line of said defendant doctors and bearing the title "The Saddle Nose." It was further alleged that this was knowingly done without plaintiff's written or other consent, and that "said use and publication of said pictures was for advertising purposes or purposes of trade."

The court held it could not be concluded from the amended complaint that the article was written and the

photographs of plaintiff used strictly and solely for illustrative and scientific purposes. The court went on to say that an article, even in a scientific publication may be nothing more than someone's advertisement in disguise; that the article in hand, with its accompanying photographs of plaintiff, was published by the owners of the journal to advertise the defendant physicians and their handiwork was a fair inference to be drawn from the amended complaint. *Griffin v. Medical Society of State of New York et al*, 11 N.Y.S. 2d 109.

This next case, a much later case but a New York case, reached a different decision.

Plaintiff alleged that defendant used her picture without her consent for the purpose of trade to illustrate an article entitled "The Miracle of Face Planing" in the magazine "Coronet." The court, however, felt that the picture, examined in conjunction with the text of the article, appeared on its face to be an illustration of a newsworthy article on a new medical development, a matter of legitimate public interest.

Plaintiff urged in her brief that as in *Griffin v. Medical Society of State of New York*, 11 N.Y.S. 2d 109, the article was really an advertisement in disguise to publicize for their own pecuniary gain the doctors mentioned in the article and the machine they had developed.

The court held to the contrary. The court said that this could not be inferred from the complaint as it stood. If it were so, plaintiff must set forth facts sufficient to support the conclusory allegation that her picture and the annexed article were used for the purpose of trade. *Siegel v. Esquire, Inc.*, 167 N.Y.S. 2d 246.

The decision in the first case seems somewhat harsh; perhaps it can be inferred from the decision of the second case that the court in New York has become more liberal. However, because one can not predict with absolute certainty the results a court will reach, it would be extremely wise to get in writing the consent of any and all patients whose pictures are to be published or shown even in a purely scientific journal.



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